

Remarks

Reconsideration of this application is respectfully requested.

Upon entry of the foregoing amendment, claims 150-170 are pending in the application, with claims 150, 160, and 170 being the independent claims. Claim 170 has been added. These changes are believed to introduce no new matter, and their entry is respectfully requested.

Based on the above amendments and the following remarks, applicants respectfully request that the examiner reconsider all outstanding objections and rejections and that they be withdrawn.

Rejections under 35 U.S.C. § 102 and 35 U.S.C. § 103

Claims 150, 151, 153-156, 158-161, 163-166, 168, and 169 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Publication No. 2003/0040792 ("the '792 publication"). Claims 152 and 162 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the '792 publication. Claims 157 and 167 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the '792 publication in view of U.S. Patent No. 5,957,949 ("the '949 patent"). Applicants respectfully traverse these rejections.

The Examiner appears to have concluded that the '792 publication is prior art under 35 U.S.C. § 102(e) based upon the earlier filing date of the '792 publication. The '792 publication, however, is not prior art with regards to the subject matter of the pending claims.

The '792 publication claims the benefit of U.S. Application No. 09/973,609 (hereinafter "the Gabbay '609 application"), filed on October 9, 2001. The '792 publication also claims the benefit of U.S. Application No. 09/659,882 (hereinafter "the Gabbay '882 application"), filed on September 12, 2000. The present application claims the benefit of (among other applications) French Patent Application No. 00/14028 (hereinafter "the French '028 application"), filed October 31, 2000.

The '792 publication does not anticipate or render obvious the pending claims because the disclosure relied on by the examiner in rejecting the present claims does not appear in the Gabbay '882 application. Specifically, the examiner states that Figures 16-

17 and ¶ [0114] of the '792 publication discloses a valve support with first and second sections and an outer circumferential dimension configured to vary along at least some portion of the axial length of the valve support, the first section having a first diameter and the second section having a second diameter, and the second diameter being greater than the first diameter. Office Action, pp. 2-3. However, neither Figures 16-17 nor the language contained in ¶ [0114] of the '792 publication appears in the Gabbay '882 application. As explained in MPEP § 2136.03.IV, in order for the subject matter of a reference to be entitled to an earlier filing date under 35 U.S.C. § 102(e), "the subject matter used in the rejection must be disclosed in the earlier-filed application in compliance with 35 U.S.C. § 112, first paragraph."

Here, Figures 16-17 and the language of ¶ [0114] were new matter in the Gabbay '609 application. Therefore, the effective 102(e) date for the subject matter of Gabbay used in the examiner's rejection is October 9, 2001, the filing date of the Gabbay '609 application. The Gabbay '609 application was filed over eleven months after the French '028 application, to which the present application claims priority. The 102(e) date is ineffective against the claimed invention because the subject matter of the pending claims was disclosed in the French '028 application. For example, at least pp. 1-5, pp. 10-11, and Figs. 7-10 of the French '028 application disclose a valve support with first and second sections and an outer circumferential dimension configured to vary along at least some portions of the axial length of the valve support, the first section having a first diameter and the second section having a second diameter and the second diameter being greater than the first diameter.

Because the present application claims priority to October 31, 2000 (the filing date of the French '028 application), the French '028 application discloses the subject matter of the present claims, and the embodiments of the '792 publication relied upon by the examiner first appeared in the Gabbay '609 application, filed on October 9, 2001, the '792 publication does not constitute prior art to the present claims. For the examiner's convenience, a copy of the file history of the '882 application is submitted herewith. A copy of the French '028 application and a translation thereof are also submitted herewith for the examiner's convenience.

The examiner rejected claims 157 and 167 under 35 U.S.C. § 103(a) as being unpatentable over the '792 publication in view of the '949 patent. For reasons previously noted, Gabbay is not an effective 102(e) reference against the claimed invention. The '949 patent was cited as teaching a heart replacement valve that uses sutures to connect a replacement valve to a support structure. The '949 patent does not disclose, among other features of the pending claims, a valve support with first and second sections and an outer circumferential dimension configured to vary along at least some portions of the axial length of the valve support, the first section having a first diameter and the second section having a second diameter and the second diameter being greater than the first diameter. Therefore, the '949 patent fails to disclose or suggest the features recited in the pending claims.

Newly added claim 170 contains subject matter similar to the subject matter of claims 150 and 160, and is patentable for at least the same reasons as those claims.

Applicants thus respectfully request that the examiner reconsider and withdraw the rejections of claims 150-170.

Other Matters

Claims 150 and 160 have been amended herein merely to shorten the preamble of those claims for readability purposes. Claims 151-159 and 161-169 have been amended herein merely to correct informalities. These amendments are believed to introduce no new matter, and their entry is respectfully requested.

Conclusion

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.



C. Matthew Rozier
Agent for Applicants
Registration No. 63,429

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1100 New York Avenue, N.W.
Washington, D.C. 20005-3934
(202) 371-2600

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